

Fair Political Practices Commission

Memorandum

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh & Remy

From: Emelyn Rodriguez, Commission Counsel, Legal Division
Scott Hallabrin, General Counsel

Subject: Prenotice Discussion of Proposed Regulation 18530.45 – Relating to Legal Defense Funds for Local Candidates and Officers

Date: May 28, 2008

Proposed Commission Action and Staff Recommendation: Approve publication of notice for adoption of Regulation 18530.45 at the Commission’s August 2008 meeting.

Reason for Proposal: Regulation 18530.45 interprets new Government Code Section 85304.5 (See Attachment 2), allowing candidates or elected officers in a local government agency to establish legal defense accounts. The legal defense accounts would allow candidates or elected officers in a local government agency to raise funds for attorney’s fees and other legal costs arising from specified civil, criminal, or administrative proceedings pursuant to Section 85304.5.

Summary of New Regulation 18530.45: The proposed regulation is similar in several areas to Regulation 18530.4, which governs legal defense fund (“LDF”) accounts and legal defense committees of state candidates and officers, which the Commission adopted at its November 2007 meeting. However, under the proposed regulation, local government agencies would have some flexibility in crafting ordinances to suit their particular community’s needs. For instance, the proposed regulation allows local jurisdictions to impose *different* requirements, including any contribution limits, as long as the FPPC’s minimum standards are met in areas of reporting, recordkeeping, and establishment of the local legal defense account and legal defense committee. If a local agency imposes contribution limits, the regulation also allows it to permit uses of legal defense funds that differ from those applicable to state candidates in Regulation 18530.4.

The following is a more detailed summary of the proposed regulation:

1. Local Regulation of Legal Defense Account. Subdivision (b) provides that FPPC rules generally govern the legal defense account and legal defense committee established by a candidate or officer under Section 85304.5. However, paragraph (b)(2) provides that a local government agency may impose different requirements—including any contribution limits—on legal defense accounts and legal defense committees as long as the requirements are at least as strict as those provided in subdivisions (c), (e), and (f) of this regulation. These subdivisions deal with the establishment of legal defense accounts and legal defense committees, recordkeeping and audit requirements, and reporting requirements. For instance, a local government agency may require quarterly filings of statements and reports, or separate LDF accounts for each legal proceeding, because these rules would be stricter than those under the proposed regulation. It also provides that requirements must be at least as strict as those provided in subdivision (i) (relating to limitations on the use of legal defense funds) unless the local government agency imposes contribution limits on the funds. For instance, a local

government agency that imposes contribution limits on legal defense funds, may have different rules allowing payment of fundraising and other costs related to legal defense.

2. Establishing the Legal Defense Account and Controlled Committee. Subdivision (c) requires local candidates and officers who raise legal defense funds to deposit the funds in a bank account separate from their campaign account and separate from a state legal defense account established under Section 85304. It also requires the establishment of a controlled committee whose statement of organization must contain a description of the specific legal dispute or disputes for which the account is established. The statement of organization must be amended as legal disputes are either resolved or initiated. In addition, the committee name must include the candidate's or elected state officer's last name.

3. Separate Accounts for Each Local Elective Office. Subdivision (d) requires a local candidate or officer to establish a separate legal defense account and legal defense committee for each local elective office to which the legal proceedings relate. Local jurisdictions may adopt different rules in this area.

4. Required Recordkeeping and Audits. Subdivision (e) provides that a candidate, treasurer, and officer are subject to recordkeeping requirements under Section 84104, and are required to keep separate detailed records, bills, and receipts, for each legal proceeding. It also requires any mandatory audit of a candidate or officer under the Act include the candidate's or officer's legal defense committee if maintained during the same audit period.

5. Reporting Requirements. Subdivision (f) requires that the legal defense committee file campaign statements and reports pursuant to the Political Reform Act at the same times and in the same places as it would be required to do for any other controlled committee formed by the candidate or officer. Because these are minimum requirements, a local jurisdiction may require a local candidate or officer to file more frequent statements or reports.

6. Limitations. Subdivision (i) requires that legal defense funds be raised in an amount reasonably calculated to pay for attorney's fees and other related legal costs. The funds may not be used to pay for fundraising, fines, penalties, judgments, or settlements. However, if a local government agency imposes contribution limits on legal defense funds, it may impose different rules specifying other permissible uses for the funds that are related to a legal defense of a candidate or officer in its jurisdiction.

7. Disposition of Remaining Funds. Subdivision (j) provides that if the candidate or officer raises more than \$5,000 above his or her actual legal costs, the remaining funds must be returned on a pro rata basis to contributors. Otherwise, the remaining funds may be distributed as allowed under Section 89519(b)(1) through (b)(5).

8. Termination and Reopening of Committees. Subdivision (k) requires termination of a legal defense account within 90 days of the date all legal disputes for which the account is established are resolved. The local ethics agency or, if no such agency exists, the FPPC Executive Director, may for good cause extend the termination date or reopen the account.

Recommendation: Staff recommends that the Commission approve publication of notice for adoption of Regulation 18530.45 at the June meeting.

Attachments: 1—Proposed Regulation 18530.45
2—Government Code Section 85304.5